

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES E. KING,

No. C 11-1885 SI (pr)

Petitioner,

ORDER DENYING APPOINTMENT OF COUNSEL AND EXTENDING DEADLINES

v.

L. SCOTT McEWEN, warden,
Respondent.

Respondent.

James E. King, an inmate at the Calipatria State Prison, filed this *pro se* action seeking a writ of habeas corpus with regard to his 1997 conviction in Contra Costa County Superior Court. Respondent has moved to dismiss the petition as untimely.¹

Petitioner has moved for appointment of counsel to represent him in this action, and has requested a "continuance" until the court rules on that motion. A district court may appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require and such person is financially unable to obtain representation." 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is within the discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986). Appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent due process violations. *See id.* The interests of justice do not require appointment of

¹In his motion to dismiss, respondent noted that there was still a habeas petition pending in the California Supreme Court. Although *In re King (James Edward) on H.C.*, Cal. S. Ct. No. S 190244, may have been pending at the time respondent filed his motion to dismiss, the California court website docket sheet shows that the habeas petition was denied by the California Supreme Court on July 13, 2011.

1 counsel in this action. The motion for appointment of counsel is DENIED. (Docket # 7, # 8.)

2 Petitioner's request for continuance is GRANTED. (Docket # 9.) Now that the court has
3 denied the motion for appointment of counsel and petitioner knows he will have to represent
4 himself, the court sets the following new deadlines: Petitioner must file and serve his opposition
5 to the motion to dismiss no later than **August 26, 2011**, if he has any arguments he wants to
6 make in addition to those in "petitioner's opposition to respondent's potential motion to dismiss"
7 filed on May 23, 2011. Respondent must file and serve his reply brief (if any) no later than
8 **September 9, 2011**.

9 Petitioner's *in forma pauperis* application is DENIED because he has ample funds in his
10 inmate trust account to pay the \$5.00 filing fee. (Docket # 4.) No later than **August 26, 2011**,
11 petitioner must pay the \$5.00 filing fee or this action will be dismissed.

12 IT IS SO ORDERED.

13 DATED: July 25, 2011



SUSAN ILLSTON
United States District Judge

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